IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 733 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
GANDALAL HARGOVINDBHAI NIMAVAT - Opponent(s)

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Appearance :
Mr.K.C.Shah, APP for Appellant(s) : 1,
MR PREMAL S RACHH for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 14/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. Heard learned APP Mr.K.C.Shah for the State

and Mr.Premal S.Rachh for the respondent. Leave to appeal granted. Appeal admitted. Learned advocate Mr.Rachh waives service for the respondent. At the request of learned advocates for the parties, the matter is taken up for final hearing today.

2. This appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by Special Judge and Fast Track Court No.6, Jamnagar on 8.10.2004 in Special Case No.12 of 1998, whereby the present opponent came to be acquitted for the charges levelled against him under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988.

3. The prosecution case is such that the accused Gandalal Hargovind Nimavat who was working in the Treasury Office came along with his uncle's son Ramshi Kanaji Sodha and stated that the pension which is obtained by the complainant's mother is bogus and the name of complainant's father which had been mentioned and the name mentioned in the Government records is different and that he will have to repay the amount and the case will be filed against him. To this, the complainant asked the accused to settle the matter instead of all these troubles and the accused demanded Rs.3,000/- which was ultimately settled for Rs.2,000/-. The complainant paid the amount as planned. Thereafter, the accused again demanded Rs.5,000/- which also was paid by the complainant.

4. A complaint to this effect was filed before the P.S.I.Chudasma of “A” Division Police Station, Jamnagar and further investigation was handed over to the Divisional Police Officer, Rural, Jamnagar. He collected the xerox copies of the notes paid to the accused and further recorded the statement of complainant and witnesses. After collecting sufficient evidence against the accused, he applied to the District Treasury Officer seeking permission to file charge sheet against the accused and after obtaining the permission, the Divisional Police Officer Shri M.V.Damor filed a charge sheet against the accused.

5. On reading the charge to the accused, the accused pleaded not guilty and claimed to be tried and, therefore, the learned trial Judge recorded the evidence of witnesses and documentary evidence was led and after hearing both the parties, acquitted the accused against which the present appeal is filed by the State.

6. The prosecution examined the following witnesses ; (1) P.W.1 Bhikhubha Jesangji Exh.21, (2) P.W.2 Prakashbhai Jamnadas Exh.22, (3) P.W. 3 Ramsang Kanaji Sodha Exh.29, (4) P.W.4 Bhavsing Aluji Exh.30, (5) P.W.5 Kalubha Harisinh Exh.31, (6) P.W.6 Gajmal Dongar Exh.32, (7) P.W.7 Mahendrasinh Jatubhai, (8) P.W.8 Dineshbhai Bhagabhai Koli Exh.39, (9) P.W.9 Bipinchandra Gordhandas Exh.40, (10) P.W.10 Motibhai Vinchhiyabhai Damor Exh.41, (11) P.W.11 Chhatrasinh

Gambhirsinh Chudasma Exh.44, (12) P.W.12 Vijayrajsinh Jaymurtising Gautam Exh.47 and also produced various documentary evidence.

7. The panch witnesses Ramsangji Kanaji, Prakash Jamnadas and Mahendrasinh Jatubhai did not support the prosecution case and they were declared hostile by the prosecution. After discussing their evidence, the learned trial Judge came to the conclusion that the prosecution has failed to prove the facts of the panchanama Exh.23.

8. Further, learned Judge discussed the evidence of the complainant. The complainant is examined who has also not supported the prosecution case and is declared hostile. In his cross-examination, he stated that all the facts were not declared by him in the complaint and, therefore, learned Judge came to the conclusion that he is not trustworthy witness.

9. The other witnesses examined on behalf of the prosecution i.e., Ramsing Kanaji Exh.29, Bhavsang Haluji Exh.30, Kalubha Harisinh Sodha Exh.31, Dinesh Bhagabhai Koli Exh.39 and Bipinchandra Gordhandas Exh.40 who are all declared hostile. The learned trial Judge has finally come to the conclusion that the prosecution has failed to prove the case against the accused and the prosecution has failed to prove the demand, acceptance and that misused his power.

10. We have carefully gone through the contentions raised as well as we have scanned the record and proceedings of the Special Case called for from the trial Court. We have scanned the evidence of each witnesses and appreciated each circumstances of the case.

11. Needless to say that in appeal against acquittal also, the High Court possess the same powers as in appeal against the order of conviction. The High Court may reappreciate the evidence and give its own finding. But in appeal against acquittal if the High Court comes to different finding than the finding derived with by the trial Court then the High Court must deal with the grounds of acquittal advanced by the trial Court. Unless the reasons given by the trial Court are manifestly perverse as unable to stand to reason in any circumstances, interference would be justified in acquittal appeals. However, from the same appreciation of evidence if two views are possible, the view taken by the trial Court cannot be replaced by the second view.

12. We do not find, therefore, reasoning of the trial Judge extensively perverse as to interfere with at this stage.

13. In view of the above, this appeal stands dismissed.

(J.R.VORA, J)

(SHARAD D DAVE, J)

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